IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

CRIMINAL APPEAL No 845 OF 2001
(Old No. 1820 of 1987)

Om Prakash S/o ;Ram Singh & others ….Revisionists.

Vs.

State of U.P. (Now Uttarakhand) …Respondent.

Sri L.K. Tiwari, learned counsels for the appellant.
Sri Nandan Arya, learned A.G.A. for the State

Date of decision :- 26.03.2007

A.F.R. (approved for Reporting)

Not approved for reporting

Date:- 26.03.2007 Initials of Judge

Note**:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.**

IN THE HIGH COURT OF UTTARAKHAND,
AT NAINITAL

Criminal Appeal No. 845/2001
(Old No. 1820/1987)

1- Om Prakash S/o Ram Singh
2- Smt. Shanti Devi W/o Om Prakash
3- Gopal Singh S/o Om Prakash,
All residents of Trevani Ghat Road,
Rishikesh, P.S. Rishikes,
Districtg Dehradun …. Appellants.

Versus

The State…… …. Respondent

Sri L.K. Tiwari, learned counsel for the appellants.
Sri Nandan Arya, learnded A.G.A. for the State.

Hon'ble Dharam Veer, J:

This appeal, U/S 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.'), has been preferred against the judgment and order dated 16-7-1987, passed by the Ist Additional Sessions Judge, Dehradun, is Sessions Trial No. 39 of 1986, State Vs. Gopal Singh and others, convicting the appellants Om Prakash, Smt. Shanti Devi and Gopal Singh for the offences U/Ss 306 and 498-A I.P.C. and sentencing each of them to undergo four years R.I. U/S 306 I.P.C. and two years R.I. U/S 498-A of the Indian Penal Code, 1860 (hereinafter referred as 'I.P.C.').

2- Briefly stated the prosecution case is as follows:-

Deceased Smt. Kamni Devi was married to accused/appellant Gopal Singh on 20-4-1984. Accused/appellant Om Prakash is the father of accused/appellant Gopal Singh and Smt. Shanti Devi is the wife of accused Om Prakash. The accused persons are resident of Triveni Ghat, Rishikesh. According to

the prosecution on 3-2-1986 at about 11.45 a.m. Smt. Kamni Devi set herself to fire and ran outside the house. The Mohalla people seeing that Kamni Devi was burning, tried to extinguish the fire and immediately she was taken in a taxi by her mother-in-law Smt. Shanti Devi and other neighbouring people to G.D. Hospital, Rishikesh, where she was admitted for treatment. There in the Hospital, Dr. Mahendra Kumar sent a memo, Ext. Ka. 15 to C.I., Police Station, Rishikesh through the ward-boy regarding the admission of Smt. Kamni Devi who was is a burnt condition. The doctor also sent an information to the Resident Magistrate and Gynecologist of Women Hospital regarding the condition of the patient. The doctor thereafter made enquiry from Kamni Devi and took her statement. Ext. Ka.16 which was noted in the accident injury register of the Hospital and thumb impression of Kamni Devi was also obtained on her statement. The statement was recorded in presence of Ram Lal and Rakesh Prasad Shahi, who also signed the statement. The doctor also made a note at the foot of the statement that at the time he took the statement of Smt. Kamni Devi, she was in a conscious state and there was no impact of any medicine on her. Thereafter the doctor noted the injuries of Smt. Kamni Devi and simultaneously started her treatment. The doctor found following things at the time of medical examination of Smt. Kamni Devi:-

1- Examinee conscious.

2- General condition very low.

3- Pulse 140 per minute very feeble.

4- Blood pressure not recordable.

5- Respiration rate 20 per minute stable.

6- Pupil equal reacting normally.

On local examination following things were found:-

80% superficial burns.

Per abdomen distended due to pregnancy.

In the presence of Dr. Mahendra Kumar, lady doctor Smt. Lilli Rana also examined Smt. Kamni Devi and per abdomen examination 28 weeks funal height vertex presentation. Foetal hurt sound present regular. The note was made by the lady doctor in the same hospital register and copy of the same has been filed as Ext. Ka. 17. In the opinion of the doctor the burn was caused by dry heat, fresh in duration. The doctor also opined that the injuries to Smt. Kamni Devi could have been caused on account of burning from kerosene oil. Patient was referred to Gynecologist Female Hospital, Rishikesh for expert opinion and referred to Doon Hospital Dehradun for observation and further management.

3- On receiving memo, Ext. Ka.15 at the police station, an entry in G.D., was made by H.M. Manorath Prasad at report No., 34 on 3.2.1986 at 12.30 hours The copy of G.D. is Ext. Ka.3. Thereafter Subhansh chand Tyagi, who was posted as S.I. in P.S. Rishikesh, went to G.D. Hospital to enquire the matter. There, he found Smt. Kamni Devi lying in an emergency room in a burnt condition. He found Smt. Kamni Devi in conscious state, so he took her statement and after taking her statement, he reached the place of incident from where he seized the burnt pieces of clothes of Smt. Kamni, regarding which he prepared Fard, Ext. Ka.5 in presence of Suresh Kumar and Bhagat Ram. The seized burnt pieces of Saree, blouse and petticoat (material exhibit-1) of Smt. Kamni Devi were sealed in a packet. The sample of seal is Ext. Ka.6. Thereafter the S.I. Subhash Chand Tyagi returned to police station where he got the case registered in G.D. report No. 38 on 3.2.1986 at 15.30 hours, which was scribed by Head Constable Manorath

Prasad. The copy of G.D. is Ext. Ka.4 In the G.D. it is noted Smt. Kamni Devi was found lying on a table of an emergency ward in G.D. Hospital and was in burnt condition and she was being given treatment by doctor. It is also noted that she was conscious and was speaking, so S.I. Sri Tyagi enquired from her on which she told him that she was running in second year of her marriage and her father Shuklal was employed in Railway at Hardwar. She further narrated that her husband was not happy with her and did not speak to her and when her husband spoke to her one or two times she had conceived and later on he started saying that he had conceived illegally and further hated her calling her a "black girl" and also used to say that she had not brought anything to them and for that reason her mother-in-law and her husband treated her with cruelty and in the morning of the date of incident her father-in-law had gone to Haridwar to call her father father and they were telling that they would sent her with her father. She further alleged that in the morning on that day her mother-in-law also beat her and thereafter she was harassed and set herself to fire after pouring kerosene oil over her and then she in falling state ran out on road where people tried to put-out the fire and they brought her to Hospital. Her mother-in-law also accompanied her.

4- Resident Magistrate of Rishikesh also reached to G.D. Hospital and he recorded her dying declaration. Before he took the statement of Smt. Kamni Devi, Dr. Mahendra Kumar had given the certificate, Ext. Ka. 19 regarding the fit mental condition of Smt. Kamni Devi. The doctor noted his opinion on Ext. Ka. 18 lateron. Then the doctors seeing that condition of Smt. Kamni Devi was deteriorating, referred her to Doon

Hospital. The case was got registered U/S 498-A I.P.C. in the G.D. and copy of G.D. was sent to circle officer, Rishikesh for Investigation of the matter.

5- Sri Ayodhya Singh (P.W.9), was posted as Dy.S.P. Rishikesh at the time of Incident. He investigated the matter. Smt. Kamni Devi died in the hospital on 8.2.1986 on account of burns which she has sustained on 3.2.1986 at about 11.45 a.m. at her inlaws house. On 10.2.1986 the case was converted to Section 306 I.P.C., regarding which an entry in G.D. at report No. 32 dated 10-2-1986 was made by H.M. Manorath Prasad, copy of which is Ext. Ka.22. The I.O. took statements of the witnesses and prepared the site plan Ext. Ka. 23, of the place of incident.

6- S.I. Dhani Ram (P.W.5), got the information of the death of Kamni Devi through Tulsi Raw ward-boy of Doon Hospital which was entered in G.D. at report No. 39 dated 8.2.1986 at 14.40 hours by Constable Clerk Ram Dayal , the copy of which is Ext. Ka. 9. Thereafter S.I. Dhani Ram reached Doon Hospital where he prepared the inquest report, Ext. Ka.10 of the dead body of Smt. Kamni Devi and the dead body in sealed condition was sent for post mortem through constable Rajvir Singh and Home-Guard Satender Singh, He also prepared sketch lash, Ext. Ka.11, photo lash Ext. Ka. 12, letter to R.I. Ext. Ka.13, and letter to C.M.O., Ext. Ka. 14.

7- Dr. B.C. Ramola (P.W.8) was posted as Medical Officer at Doon Hospital on 9.2.1986. On that day at about 3.00 P.M. he conducted the post mortem on the body of the deceased. He stated that she had died

in Doon Hospital on 8.2.1986 at 1.30 noon. On external examination the doctor found the following:-

> The deceased was of average built body. Rigor mortis was present. Post mortem staining was present, eyes were closed, 1st, 2nd and 3rd degree burns were found all over the body, except head and lower parts of both legs including both feet. Line of redness lesication and signs of reparative process were present.

On internal examination the membranes were found congested and brain was found pale and congested, chest was found burnt second to third degree. Lungs were also congested, heart was congested and weight was 180 grams, 1st to 3rd degree burns were present in the walls of stomach and peritoneum was also congested and about two onus fluid was present, bladder was congested and empty, liver congested, weight 900 grams and spleen was also congested and in uterus one female dead foetus was present which was about 32 weeks old.

In the opinion of the doctor death was caused due to shock, septicemia and toxemia, which were the result of above burn injuries. The doctor prepared post mortem report, ext. Ka.21.

8- After completion of investigation the I.O. Submitted charge sheet, Ext. Ka. 24, against the present appellants as well as km. Rani, sister of accused Gopal Singh, who was also made accused in the case.

9- The Chief Judicial Magistrate Dehradun, vide his order dated 1-5-1986 committed the case to the court of Sessions for trial.

10- The 1st Addl. Sessions Judge, Dehradun framed charges U/Ss 306 and 498-A I.P.C. against accused Om Prakash, Gopal Singh, Smt. Shanti and Km. Rani. They pleaded not guilty and claimed to be tried.

11- The prosecution, in order to prove its case, examinaed in all nine witnesses, viz. Shuk Lal, P.W.1, the father of the deceased Smt. Kamni Devi, S.I. Subhash Chand Tyagi, P.W.2, who got the case registered at P.S. Rishikesh, Bhagat Ram, P.W.3, the next door neighbour of the accused, Ram Kishore, P.W.4, the brother of the deceased, S.I. Dhani Ram, P.W.5, who prepared the inquest report of the dead body of the deceased and other papers and sent the same for post mortem, P.W.6, Dr. Mahendra Kumar, who initially medically examined the deceased and took her dying declaration, P.W.7, Sri R.K. Arora, the Resident Magistrate, who took dying declaration of the deceased, PW.8 Dr. B.C. Ramola, who conducted post mortem on the dead body, and PW.9 Sri Ayodhya Singh, A.S.P. who investigated the matter.

12- The accused persons in their statement U/S 313 Cr.P.C. have denied the prosecution allegations and stated that witness Bhagat Ram wanted to grab their shop and for this reason false case has been concocted against them. However, no oral or documentary evidence has been produced in the defence.

13- On appreciation of evidence on record and having heard learned counsel for the parties, the learned Sessions Judge found the accused/appellants Om Prakash, Smt. Shanti Devi and Gopal Singh, guilty

of the offences punishable U/Ss 306 and 498-A I.P.C. and accordingly convicted and sentenced each of them to undergo 4 years R.I. U/S 306 I.P.C. and 2 years R.I. U/S 498-A I.P.C. However, the fourth accused Km. Rani was found not guilty of the charges U/Ss 306 and 498-A I.P.C. leveled against her and she was acquitted accordingly.

14- Felling aggrieved from their conviction and sentences, the accused/appellants Om Prakash, Smt. Shanti Devi and Gopal Singh have come up in appeal before this court.

15- I have heard Sri L.K. Tiwari, learned counsel for the appellants and Sri Nandan Arya, learned A.G.A. and perused the record.

16- It is pertinent to note herein that the most important piece of evidence in the instant case is the dying declaration of the deceased Smt. Kamni Devi. The incident is said to have taken place at about 11.45 a.m. on 3.2.1986 at the house of the accused/appellants situate in Triveni Ghat, Rishikesh when the deceased Smt. Kamni Devi set herself to fire and after setting herself to fire she ran outside the house. The Mohalla people seeing Kamni Devi burning, tried to put-out the fire and some of them threw their clothes on her and immediately she was taken in a taxi by her mother-in-law the accused Smt. Shanti Devi and other neighbouring people to G.D. Hospital, Rishikesh, where she was admitted for treament. Dr. Mahendra Kumar (P.W.6), who was posted in the G.D. Hospital, sent information (Ext. Ka.15) of the incident to the police through the ward-boy. He also sent Information to Resident Magistrate and Gynecologist of Women

Hospital regarding the condition of the patient. At the initial stage Dr. Mahendra Kumar took the statement of Smt. Kamni Devi in question answer form, which is Ext. Ka. 16. The said statement of Smt. Kamni Devi is as follows:-

"Name of Patient -Kamni Devi.

तुम्हारा क्या नाम है?	– कामीनी देबी
तुम्हारे पति का क्या नाम है?	–गोपाल
तुम्हारी उम्र कितनी है?	– १९–२० वर्ष
तुम्हारा पता क्या है?	– त्रिवेणी घाट, ऋषिकेश
तुम कैसे जली?	मॉजी ने मुझे सुबह मारा था। पति मुझसे बोलता नहीं है। ससुर मेरे पिता को बुलाने गये हैं। मै गर्भवती हूॅ। मेरे पति ने कहा कि गर्भ किसी और से है। तुम्हें तुम्हारे घर भेज देगें। तो मैने अपनी उपर मिट्टी का तेल छिडक अपने आप आग लगा ली।

तुम्हें कुछ और तो नहीं कहना है? मेरे पिता को बुला दो, भैया को भी बुला दो।

1. ह0 रामलाल	2– ह0 राकेश प्रसाद साही
नाम रामलाल पुत्र देबीदास	पुत्र श्री राजेन्द्र प्रसाद साही
ऋषिराम का मकान आदर्श	खादी ग्रम उद्योग कमीशन
ग्राम ऋषिके ।।	1– मालवीय मार्ग, ऋषिके ।

R.T.I. of Kamni Devi
Attested
Sd/ Dr. M.Kumar
3.2.86

The above statement was recorded by me in presence of two witnesses given above when the patient was fully conscious and not under the effect of any drug.

Sd/ Dr. M.Kumar,
3.2.86"

17- The second Statement before death of Smt. Kamni Devi was taken by S.I. Subhash Chand Tyagi(P.W.2), who had reached at the G.D. Hospital, after receiving the information sent by Dr. Mahendra Kumar. This witness has made mention of the statement of Smt. Kamni Devi in the G.D. No. 38 at 15.30 hours on 3.2.1986, the relevant portion of the G.D. is as under:-

" मै एस0आई0 इस मेमो की जॉच हेतु थाने से रवाना होकर सरकारी अस्पताल ऋषिके ा पर पहुॅचा तो वहॉ पर इमरजेन्सी रूम में मुझे श्रीमती कामिनी देवी मेज के उपर जली हुई अवस्था में लेटी हुई मिली और डाक्टर उसका उपचार कर रहे थे और वह हो ा हवास में थी तथा बोल रही थी। मैने उसके जलने के विषय में उससे पूछताछ की तो उसने बतलाया कि मेरी शादी को दूसरा साल चल रहा है। मेरे पिता सुखलाल रेलवे में हरिद्वार में कार्य करते हैं। मेरा पति मुझसे नाराज रहते है। तथा बोलता नहीं था। एक दो बार मुझसे बोला तो उससे मेरा गर्भ रह गया। फिर उसने मुझे यह कहना शुरू किया कि तेरा वह हराम का गर्भ है, मुझे काली–काली कहकर भी नफरत करता था और कहता था कि तू अपने बाप से क्या लाई। तेरे बाप ने हमें कुछ नहीं दिया और इसी कारण मेरी सास और मेरा पति मुझे तॅग करते थे। आज सुबह मेरे ससुर मेरे बाप को बुलाने के लिये हरिद्वार गए हैं और कह रहे थे कि तेरे बाप के साथ तुमको भेज देगें। आज सुबह मेरे मॉ जी (सास) ने मुझे मारा था। इसके बाद मैंने तॅग आकर गुस्से में लगभग पौने बारह बजे रसोई में अपने उपर मिटट्ी का तेल डालकर आग लगा ली थी। आग लगाने के साथ मैं गिरती पडती हुयी बाहर सडक पर आ गई, जहॉ पर लोगों ने कपडें डाकर मेरे शरीर पर लगी आग बुझाई तथा मुझे अस्पताल ले आये। उस समय मेरी सास घर पर मौजूद थी, वह भी लोगों के साथ मुझे लेकर अस्पताल आई थी।''

18- The third dying declaration of deceased Smt. Kamni Devi was recorded by Sri R.P. Arora (P.W.7) on 3.2.1986 itself. This statement was also recorded in question-answer form, which is Ext. Ka.20. The said dying declaration is also reproduced as below:-

" Dying declaration of Smt. Kamni W/o Sri Gopal Singh, aged about 20 years, R/o Triveni Ghat.

Place- S.P.S. Hospital, Time = 1-05 P.M.

प्रश्न– आप कैसे जली?

उत्तर– अपने आप जली। मिटट्ी का तेल अपने उपर अपने आप छिडक कर जली।

प्र न आपने ऐसा क्यों किया?

उत्तर– दो साल से परे ाान थी। आदमी कहता था कि तुम काली हो। इसीलिए ऐसा किया।

प्र न-आपको कुछ और कहना है?

उत्तर- मेरे पापा जी को बुला दो।

आगे पुनः कहा कि मैं कुछ और कहना चाहती हूँ। उसने आगे बताया कि मेरी मॉजी (सास) ने आज मुझे मारा। सास ने मारते हुए यह भी कहा तुम्हें तुम्हारे घर भेज दोगें। पति ने यह भी कहा कि जो बच्चा तुम्हारे पेट में है वह मेरा नहीं है। मेरे ससुर, मेरे पिता जी को बुलाने गये है।

ह0 आर0एम0 ऋषिकेश। R.T.I. of Smt. Kamni W/o Sri Gopal Singh.

३.२.८६

मैनें बयान लेने से पूर्व श्रीमती कामनी पत्नी श्री गोपाल सिंह को अवगत करा दिया था कि वे बयान देने के समय बिना किसी जोर दवाव में है। यह बयान उन्होंने मुझे अकेले में और स्वतन्त्र रूप से दिया है। पुलिस विभाग का भी कोई बयान देते समय उपस्थित नहीं था।

ह0 आर0 एम0 ऋषिकेश

३.२.८६ ।''

Dr. Mahendra Kumar also appended following certificate on the above dying declaration of Smt. Kamni Devi-

"Certified that Kamni Devi is fully conscious and not under the effect of any drug and can give her statement."

19- Learned counsel for the appellants first of all argued that the deceased Smt. Kamni Devi had

Sustained 80% superficial burns and she was not in a position to given any statement and the alleged dying declarations have been prepared with the connivance of police. He also submitted that proper procedure was not followed in recording the dying declaration by the doctor as well as by the Resident Magistrate, therefore the same have no relevance in the eyes of law and the conviction of the appellants cannot be based on the said dying declarations.

20- I find no substance in the submission raised by the learned counsel for the appellants. It is the clear cut case of the prosecution that immediately after Smt. Kamni Devi set herself to fire and came out of her house in a falling state, seeing her ablaze, the Mohalla people tried to put-out the fire and immediately took her to Hospital in a taxi. She was conscious and was fit to give statement. Dr. Mahendra Kumar (P.W.6), who was present in the Hospital when Smt. Kamni was admitted there in an injured condition, has given the certificate that Smt. Kamni Devi was fully conscious and was not under the effect of any drug and can give her statement. This witness has recorded the dying declaration at the initial stage and he has proved the said dying declaration by giving his on oath statement. The doctor has noted the statement in the hospital register and the copy of which has been proved by him as Ext. Ka.16. Further S.I. Subhash Chand Tyagi (P.W.2) on receiving information, Ext. Ka.15, sent by Dr. Mahendra Kumar, reached the Hosptial and Smt. Kamni Devi was interrogated by him and she also narrated the incident to him, the mention of which was made by him in the G.D. report No. 38 at 15.30 hours the same day, i.e. 3.2.1986. This witness has proved the copy of the G.D.

(Ext. Ka.4) and the entry made in it with regard to the statement of Smt. Kamni Devi.

21- The Resident Magistrate was also informed by Dr. Mahendra Kumar and he also reached in the hospital the same day, i.e. 3.2.1986 and recorded the dying declaration of Smt. Kamni Devi. The Resident Magistrate, Sri R.P. Arora, P.W.7, has proved the dying declaration, Ext. Ka. 20 by giving on oath statement. He has deposed that on 3.2.1986 he had taken the statement of Smt. Kamni. He has stated that he went to G.D. Hosptial Dehradun to take the dying declaration. Before taking her statement, he had inquired from the doctor as to whether she was in a fit state of mind to give statement or not and obtained certificate Ext. ka.19 on the statement and thereafter he proceeded to record her statement. He has further deposed that he himself had inquired from Kamni Devi whether she is under any duress or not and Smt. Kamni Devi had given her statement to him freely and no police personnel or any other person was with him at the time of giving her statement. In cross-examination this witness has alleged that he did not know Smt. Kamni Devi from before. No suggestion was given to this witness as to why he will give false evidence against the accused persons. To me, this witness seems to be an independent witness and there is no reason to disbelieve his deposition.

22- The another glaring aspect in the above noted dying declarations is that the deceased had given the similar cause of incident. According to her, her husband accused Gopal Singh did not like her and used to tell her “black-complexioned lady” and for this reason he did not use to talk to her and when he came to talking

terms with her, she became pregnant from him and knowing this fact, the accused Gopal Singh began to harass her by telling that she has conceived the pregnancy from some other person. The deceased also told that her husband and mother-in-law used to harass her for not bringing anything in the dowry from her father and used to tell her to send to her father's house to live there forever. Further she deposed that on the day of incident, her father-in-law had gone to call her father and soon before setting herself to fire, her mother-in-law had assaulted her.

23- From perusal of the dying declarations and the evidence of the witnesses in this regard seem to be independent and natural and are worthy of placing full reliance. I find no procedural defect in recording the dying declaration by the Dr. Mahendra Kumar (P.W.6) and Resident Magistrate, Sri R.P. Arora, P.W.7. In my opinion the facts and circumstances of the case leads to only irresistible conclusion that the dying declarations are a genuine documents and legally acceptable in evidence.

24- Learend counsel for the appellant also argued that the deceased had herself committed suicide by pouring kerosene oil at her body and she was not abetted to suicide by any of the accused/appellants. It was also submitted that the deceased was not treated with cruelty by the appellants and the prosecution has not brought any evidence in this regard on record.

25- Before dealing with the above submissions of the learned counsel it will be relevant to go thought the definition of abetment. Abetment has been defined under section 107 I.P.C., which is quoted below:-

“107. Abetment of a thing.- A person abets the doing of a thing, who-

First-Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing; or

Explanation 1- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of the thing.”

26- Further “cruelty” by husband or relatives of husband has been defined under section 498-A I.P.C., which is quoted below:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty-whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extent to three years and shall also be liable to fine.

Explanation- For the purposes of this section, “Cruelty” means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

27- To prove the factum or abetment and cruelty committed towards the deceased by the accused persons, the prosecution has produced P.W.1 Shuk Lal, P.W.3, Bhagat Ram, and Ram Kishore, P.W.4. P.W.1, Shuk Lal is the father of deceased Smt. Kamni Devi. This witness has deposed that on 20-4-1984 marriage of Kamni was performed with accused Gopal in Nainital. The accused persons are resident of Triveni Ghat, Rishikesh. The accused has a merchandise shop outside their house. He further deposed that after marriage the behaviour of accused towards Kamni Devi was normal for some days but thereafter the accused persons started making demand of Rs. 1000/- or Rs. 2,000/- but due to his poor condition he could not fulfill their unlawful demand. He further alleged that Kamni Devi had complained to him, his wife and son and other relatives about the unlawful demand of dowry made by the accused persons. He further stated that accused also demanded money for their shop. On 21-4-1985 accused Gopal Singh fetched Kamni Devi to her Maika. Gopal Singh accused also sent telegram on 23.11.85 to send back Kamni Devi to his house and on 25-11-85 the accused Gopal Singh came to his house and carried Smt. Kamni Devi to her inlaws house. This witness further deposed that the accused persons had not informed him about the incident of burning of Kamni Devi and came to know about the incident at Haridwar on 5.2.1986. This witness has further proved the letter,

Ext. Ka.1, sent by Kamni Devi to her brother Ram Kishore. Perusal of the letter reveals that Smt. Kamni Devi had requested his brother to bring Rs. 2000/-. She has also written in the letter that she had not taken food for the last 10 to 15 days. The allegation of adultery by the husband was also written in it. This letter bear the stamp of post office Rishikesh. On behalf of defence genuineness of this document has been challenged only on the ground that it bears no ticket but the hand writing of Smt. Kamni Devi was not disputed. This witness has said that at the time he filed this it had no dak ticket as the letter was sent as bearing (Bairang) letter. This witness further deposed that inland letter Ext. Ka.7 was sent to his son Ram Kishore by accused persons. Perusal of this letter shows that the accused persons had made demand of some money from the brother of Kamni Devi to run their shop.

28- P.W.3, Bhagat Ram is the neighbour of accused persons. This witness has deposed that on 3-2-1986 at about 11-11.30 a.m. he was sitting in his shop, suddenly Kamni Devi came out of her house opening her hair in burning state and she was shouting ‘Bachao Bachao, she has burnt’. The neighbouring people tried to put-out the fire by throwing clothes on her and carried her in a taxi to hospital. He has further deposed that Daroga Ji had come at the spot and burnt clothes were taken into possession and had prepared Fard, Ext.Ka.5 at the spot. This witness has proved his signatures on the Fard. This witness has specifically deposed that 10-15 days ago to the incident the mother-in-law of Kamni had threatened her to burn by sprinkling kerosene oil and they had reprimand her not to do so. He has further stated that Smt. Kamni was

being ill-treated and beaten at her inlaws house. In cross-examination this witness has alleged that the face of Kamni Devi has not burnt in fire. She had become unconscious for some time and thereafter she had regained her consciousness. In his cross-examination this witness further alleged that dispute In relation to Kamni was there in her inlaws house from since her marriage. This witness has been cross-examined at length but nothing material could be brought out from it which may discard his natural and independent deposition. In my opinion P.W.3, Bhagat Ram, who is neighbour of the accused persons is a natural and truthful witness and from his testimony ill-treatment of deceased Kamni Devi at the hands of accused Gopal Singh and Smt. Shanti Devi, her husband and moher-in-law respectively is fully proved.

29- The third witness of fact is Ram Kishore, P.W.4, who is the brother of deceased Smt. Kamni Devi. He has deposed that the inlaws of Kamni had made demand of dowry and used to call her ‘Kali’. He has specifically deposed that they used to beat his sister and accused Gopal Singh used to demand the money from him. This witness has also proved the letter, Ext. Ka.8 and stated that this letter was written by his sister to him. In his cross-examination this witness has deposed that after her marriage, Kamni Devi ahd come to his house for 3-4 times and whenever she used to come to his house, she had made complaint at her Maika about the cruel behaviour of her inlaws. This witness has fully supported the version given byhis father P.W. 1, Shuk Lal and has also proved the mal-treatment of Smt. Kamni Devi at the hands of accused persons.

30- To prove the factum of cruelty and abetment to suicide, besides the above evidence, there is dying declaration of the deceased Smt. Kamni Devi in which she has clearly deposed that she was upset for the last two years; that her husband used to call her black-complexioned lady; that her mother-in-law in the morning on the day of incident had beaten her; that her husband and mother-in-law used to tell her that she had conceived from some other person and that she will be sent back to her Maika forever and therefore she was compelled to commit suicide by setting herself to fire.

31- Now it is to be seen whether all the accused/appellants participated in commission of the crime or not?. The trial court has held guilty all the accused persons in committing the crime. The deceased in her dying declaration has specifically made allegations against her husband accused/appellant Gopal Singh and her mother-in-law accused/appellant Smt. Shanti Devi. She had not named her father-in-law accused/appellant Om Prakash. Against accused/appellant Om Prakash the deceased has only deposed that he had gone to call her father. The witnesses adduced by the prosecution have also not assigned the specific role of accused/appellant Om Prakash in committing cruelty to the deceased or abetting her for suicide, only word ‘inlaws’ has been used and unless specific role has been assigned to this appellant, he cannot be punished. As stated above, the deceased Smt. Kamni Devi has not named the accused/appellant Om Prakash in the commission of either abetting suicide or committing cruelty against her or calling her ‘Kali’ or allegation of pregnancy from other person, therefore, this accused/appellant cannot be held guilty of the charges leveled against him. In my

opinion the trial Judge has committed a manifest error in holding him guilty of the charges U/Ss 306 and 498-A I.P.C. and accordingly he is liable to be acquitted.

32- So far as the other two accused/appellants are concerned, they have directly involved themselves in commission of the crimes against the deceased. The deceased Smt. Kamni Devi In her dying declarations has specifically alleged that her husband accused/appellant Gopal Singh and her mother-in-law Smt. Shanti Devi used to treat her with cruelty by saying her 'Kali' and vague allegation of having conceived from some other person and they used to tell to send her to Maika forever. She further told that she was not happy at her inlaws house for the last two years as she was being harassed by these accused persons. Even, before she put herself ablaze on the day of incident, she was beaten by her mother-in-law.

33- Dr. B.C. Ramola, P.W.8 had conducted post mortem on the body of the deceased and found 1st, 2nd and 3rd degree burns all over her body except head and lower parts of both legs including both feet. The doctor also found one 32 weeks female dead foetus in the womb of the deceased. Dr. Mahendra Kumar P.W.6 who had treated the deceased at the first stage, has found 80% superficial burns on the body of the deceased and the abdomen was found distended due to pregnancy. Thus the medical evidence also fully corroborates the prosecution case, with regard to death of deceased by burn injuries and her having her pregnancy.

34- Thus, both the accused/appellants Gopal Singh and his mother Smt. Shanti Devi are guilty of

commission of crime of abetment and cruelty towards the deceased Smt. Kamni Devi.

35- Abetment of suicide has been made punishable U/S 306 I.P.C., which is reproduced below:-

> **"306. Abetment of suicide.-** If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine."

36- The accused/appellants Smt. Shanti Devi and Gopal Singh have been awarded sentence of four years R.I. U/S 306 I.P.C. and two years R.I. U/S 498-A I.P.C. and looking to the graveness of the offence the sentences awarded to them cannot be said to be harsh.

37- In view of the aforesaid discussion, I am of the firm view that the accused/appellants Smt. Shanti Devi and Gopal Singh have rightly been held guilty of the offences U/S 498-A and 306 I.P.C. and the appeal filed on their behalf is liable to be rejected. However, the appeal of accused/appellant Om Prakash is liable to be allowed.

38- The appeal filed on behalf of accused/appellants Smt. Shanti Devi and Gopal Singh is dismissed. Both these appellants are on bail. Their bail bonds are cancelled and sureties discharged. They shall be taken into custody forthwith to serve out the sentences awarded to them vide impugned judgment and order dated 16-7-1987 passed by Ist Additional Sessions Judge Dehradun in S.T. No. 39/1986.

39- The appeal filed on behalf of accused/appellant Om Prakash is allowed. He is acquitted of the charges U/Ss 498-A and 306 I.P.C. and the conviction and sentences awarded against him by the trial court are hereby set aside. He is on bail. His bail bond are cancelled and sureties discharged. He need not surrender.

40- Let the record be immediately transmitted to the trial court for compliance.

` **(Dharm Veer, J.)**

Dated: March26, 2007.

ISB